SUPREME COURT OF THE UNITED STATES.

No. ~~116~~. 72.

BANK OF THE UNITED STATES, APPELLANT,

VERSUS

JACOB WHITE, DAVID CUMMINS, AND ROB'T BENNIFIELD.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

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Pleas begun and held at the court-house, in the town of Columbus, on Monday, the 9th day of July, in the year of our Lord one thousand eight hundred and thirty-two, and of the American independence the fifty-seventh, before the Honorable John McLean and John W. Campbell, judges of the circuit court of the United States within and for the seventh circuit and district of Ohio.

JACOB WHITE, DAVID CUMMINS, and ROBERT BENNIFIED, complainants,
vs.
The PRESIDENT, DIRECTORS, and COMPANY of the BANK of the UNITED STATES, defendants. } *Chancery.*

Be it remembered that heretofore, to wit, on the twenty-first day of July, in the year of our Lord one thousand eight hundred and thirty-one, came Jacob White, David Cummins, and Robert Bennifield, by Charles Hammond, esq., their counsel, and filed in the clerk's office of the court aforesaid their bill of complaint against the President, Directors, and Company of the Bank of the United States, clothed in the following words, to wit: "To the honorable the judges of the circuit court of the United States for the seventh circuit and district of Ohio, in chancery sitting: The bill of review of your orators, Jacob White, David Cummins, and Robert Bennifield, humbly complaining, showeth unto your honors that, in the month of September, eighteen hundred and twenty-six, the President, Directors,

Bill.

and Company of the Bank of the United States, filed a bill in chancery in this court against your orators, and against Hugh Glenn, James Glenn, and Thomas Graham, wherein the said President, Directors, & Co. of the Bank of the United States set forth, that, upon account of debts previously due from Jacob White, Hugh Glenn, James Glenn, and Thomas Graham, the said President, Directors, and Company, at the September term of this court, in the year eighteen hundred and twenty-two, recovered against Jacob White a judgment for the sum of nine thousand twenty-seven dollars and fifty cents and costs; and at the same term, recovered a judgment against Jacob White, Hugh Glenn, James Glenn, and Thomas Graham, for the sum of twenty-nine thousand seven hundred ninety-eight dollars forty-three cents; and at the July term of the same court, in the year eighteen hundred and twenty-six, the said President, Directors, and Company of the Bank of the United States recovered a judgment against Jacob White, for the sum of ninety-one thousand two hundred and nine dollars and costs: all which judgments were due and unpaid. Upon which judgments executions had issued, and were levied upon certain real estate in said bill described and specified, as by reference thereto will appear, which lands had been offered for sale in due form of law, but no sale thereof had been effected. The said President, Directors, and Company, further set forth in their said bill, that Jacob White, confederating with others, as in said bill alleged, on the nineteenth day of December, 1820, fraudulently conveyed part of said lands to David Cummins, without receiving any consideration therefor; and that, on the nineteenth day of December, 1820, said Jacob White fraudulently conveyed other part of said land to Robert Bennifield, without receiving any consideration, said Cummins and Bennifield being sons-in-law of said Jacob White, said two tracts of land being all the lands then owned by said Jacob White, and the object of such conveyances being to prevent the recovery of the debts then due from said Jacob White to said President, Directors, & Co.; the said David Cummins and Robert Bennifield holding said lands in trust for the said Jacob White. And the said President, Directors, & Co. further charged in said bill, that, on the twenty-sixth day of April, in the year eighteen hundred and seventeen, said Jacob White conveyed one other tract of land in said bill described, to David Cummins as a donation, the said Jacob then being largely indebted to said President, Directors, & Co. And the said President, Directors, and Company of the Bank of the United States, in their said bill, prayed that the said Jacob White, David Cummins, and Robert Bennifield might answer said bill, and the interrogatories therein propounded for them to answer; and that, upon a final hearing, the court would decree said deeds so executed by the said Jacob White to said Cummins and to said Bennifield, to be delivered up, cancelled, and destroyed; and that the lands therein described be sold to satisfy the demands of the said President Directors, and Company, against the said Jacob White. And your orators further show that such proceedings were had upon said bill, that your orators filed a demurrer thereto, and, at the July term of this court, in the year eighteen hundred and twenty-eight, their said demurrer was overruled, and the cause remanded to rules, and a rule taken for answer in sixty days, which, at August rules, eighteen hundred and twenty eight, was continued; and at September rules, eighteen hundred and twenty-eight, the words "decree pro confesso" was minuted on the rule book; and thereupon the cause was continued from term to term until July term, eighteen hundred and thirty; at which July term, 1830, on motion of the complainants, a final decree was

entered in the words and figures following: "It appearing to the court that the defendants in this cause are in default for answer, it is ordered, adjudged, and decreed, that the matters stated and set forth in the complainants' bill be taken as confessed and true, and the court therefore order and decree that the several deeds set forth in the complainants' bill, as having been made by the said Jacob White, without any valuable consideration, and with a view to delay and hinder the complainants in the collection of their debts set forth in their bill, and that the same is therefore fraudulent as to the said complainants. It is therefore ordered, adjudged, and decreed, that the said several tracts of land in said several deeds described, are liable to be sold for the the satisfaction of the said several judgments held by the said complainants against said Jacob White and others, mentioned and set forth in complainants' bill And it is further ordered that, so far as said deeds may interfere with the complainants in the collection of their said judgments, the same are hereby declared void; and the said defendants are perpetually enjoined from setting up or asserting title under said deeds, as against the complainants or any persons who may claim as purchasers at sales made on executions under any or either of said judgments held by said complainants; and it is further ordered that the complainants recover of the said defendants their costs in this behalf expended. All which matters will more manifestly appear by a reference to the said proceedings and decree now remaining in this court, which your orators refer to as a part of this bill of review.

Your orators further show that said decree, erroneous and prejudicial to them in this, that said decree annuls and vacates, as it respects the claim of the said President, Directors, and Co., divers good and valid conveyances, made and executed for good and valuable consideration, without the exhibition of any evidence impeaching the same. And said decree was irregularly, illegally, made and entered as a final decree, when, according to law and the rules of this court, the same ought only to have been entered as an interlocutory decree, and a copy thereof served upon your orators before the same became final, for which errors your orators pray that the said decree may be reviewed, set aside, and vacated; and your orators pray such other and further relief in the premises as to equity shall seem right, and will pray, &c.

C. HAMMOND,
Sol. for Compl'ts.

And thereupon a writ of the United States of America, of supœna issued, directed to the marshal of the district of Ohio, clothed in the following words, to wit: "United States of America, district of Ohio, ss.

Subpœna. To the marshal of said district greeting: We command you to summon the President, Directors, and Company of the Bank of the United States, if they be found in your bailiwick, to appear before the judges of the circuit court of the United States for the seventh circuit and district of Ohio aforesaid, at Columbus, on the third Monday in the month of December next, to answer a certain bill of review exhibited against them by Jacob White, David Cummins, and Robert Bennifield, and this they shall in no wise omit, under the penalty of the law; and have then there this writ. Witness, the honorable John Marshall, Chief Justice of the United States, this 21st day of July, eighteen hundred and thirty-one, and in the 56th year of the independence of the United States of America.

Attest: WILLIAM MINER,
Clerk.

And afterwards, to wit, at the December term of said court, Anno Domini, eighteen hundred and thirty-one, came the marshal of the district of Ohio, and made return of the aforegoing recited writ, as follows, to wit:

Return. "I served this writ by giving to Herman Cope, esq., agent of the defendants, a copy of this writ, and also a copy of the bill of review, on the 5th of November, 1831.

JOHN PATTERSON,
Marshal."

And thereupon this cause was continued, and afterwards, to wit, on the seventh day of March, eighteen hundred and thirty-two, the defendants filed in court here the following answer, to wit:

Answer.

The PRESIDENT, DIRECTORS, and COMPANY OF THE BANK OF THE UNITED STATES, *Ads.* JACOB WHITE, DAVID CUMMINS, and ROBERT BENNIFIELD.	*Seventh circuit of the United States of America and district of Ohio, in chancery.*

The answer of the President, Directors, and Company of the Bank of the United States, to the bill of review filed by Jacob White, David Cummins, and Robert Bennifield, against the said President, Directors, and Company of the Bank of the United States, for answer to said bill, or to so much thereof as they are advised it is material for them to answer unto, they answer and say, that it is true, as in said bill is alleged, that, in the month of September, in the year 1826, these defendants did file their bill on the chancery side of this honorable court, against the said Jacob White, David Cummins, and Robert Bennifield, Hugh Glenn, James Glenn, and Thomas Graham, setting forth that said Jacob White, Hugh Glenn, and James Glenn, had become largely indebted to these defendants, and in amount exceeding one hundred thousand dollars: all of which debts were contracted between the year eighteen hundred and seventeen, and eighteen hundred and twenty. That they recovered the several judgments in said bill of review set forth, and that executions issued, and were levied on the two judgments first set forth, about the twenty-seventh day of November, eighteen hundred and twenty-two, upon several tracts of land in said bill set forth. That the said White, Hugh and James Glenn, David Cummins, and Robert Bennifield, having combined to delay and defeat these defendants in the collection of their judgments aforesaid, said Jacob White, on the nineteenth day of December, in the year eighteen hundred and twenty, transferred to said David Cummins, without consideration, and in truth, to *to* delay and defraud said Bank of the United States, a tract of land in said bill set forth, part of the property mentioned in said bill as having been levied on as aforesaid. That, on the same nineteenth day of December, eighteen hundred and twenty, the said Jacob White fraudulently and without consideration, and with the like view to hinder and delay these respondents in the collection of the said judgments, executed and delivered to said Robert Bennifield a certain other tract of land in said bill described, and part of the land so levied on as aforesaid. It was further alleged that said two tracts of land were all the real estate said Jacob White owned at the date of said conveyances; and that, at that time, all the debts before referred to were due and owing to these defendants. That said Cummins and Bennifield received said conveyances from said White with a full knowledge of the fraudulent intent of said Jacob

White, and for the express purpose of preventing these defendants from resorting to the lands aforesaid for the satisfaction of their debts so due as aforesaid. That said White, on the 26th day of April, eighteen hundred and seventeen, without any consideration, but as a mere donation, he, said Jacob White, being then largely indebted to respondents as aforesaid, conveyed a certain other tract of land to said David Cummins; and that said last deed is void as to said Bank of the United States. They prayed that said Cummins, Bennifield, and other defendants, might fully, and under oath, answer the allegations contained in said bill, and that, on a final hearing, said deeds executed to Cummins and Bennifield might be delivered up, cancelled and destroyed, and that said lands might be sold to satisfy the demands of said President, Directors, and Company of the Bank of the United States. These respondents also state that on the twenty-eighth day of September, in the year eighteen hundred and twenty-six, said Bennifield and Cummins were regularly served with process of subpœna upon said bill; and on the thirty-first day of October, eighteen hundred and twenty-six, said Jacob White was also duly served with process of subpœna thereon. That, at the January term of this court, eighteen hundred and twenty-seven, said White, Bennifield, and Cummins, were ruled by this court to answer said bill. That, at the July term of same year, said Jacob White, Robert Bennifield, and David Cummins, being still in default for answer, and a decree *pro confesso* entered at the preceding rules, the said White, Bennifield, and Cummins, entered their appearance in said cause, and filed a general demurrer to said bill of complaint, which said demurrer, being afterwards fully argued, was directed by the order of this court to be overruled, at the July term of this honorable court, in the year eighteen hundred and twenty-eight. And these defendants aver and will prove that, at the time said demurrer was so overruled by this court as aforesaid, Joseph S Benham, esq., a solicitor of this court, employed by the said White, Cummins, and Bennifield, and who, as such solicitor, with Charles Hammond, esq., also a solicitor, conducted and managed said cause in this honorable court, then and there gave the said court, and the attorney of these defendants, notice that the defendants in said cause did not wish to file any answer to said bill.

They further admit that said cause was continued from term to term until the July term, eighteen hundred and thirty, at which term this honorable court pronounced a final decree as in said bill is set forth. These defendants deny that any error or irregularity exists in said decree, or that the same was erroneously entered; they deny that said decree ought to have been interlocutory, and they do not admit that a copy thereof ought to have been served upon said White, Cummins, and Bennifield, previous to rendering a final decision therein, after they had appeared and demurred to said bill; and, having answered, they pray to be dismissed with their costs, &c.

STORER & FOX, *Sol'r.*
CASWELL & STARR.

Approved: N. BIDDLE, *Pres't.*

Decree.

And now, at this day, to wit, Monday the ninth day of July, in the year of our Lord, one thousand eight hundred and thirty-two, being the time and place first herein aforesaid mentioned, came the parties by their counsel, and the bill and answer being read, and the transcript of the proceedings, and of the decree in the original case of the President, Directors, & Co. of the Bank of the United States, vs. Jacob White, David

Cummins, Robert Bennifield, Hugh Glenn, and James Glenn, being seen and inspected, and consideration thereon had, the court are of opinion that there is error in the said decree, in this, that the said decree appears to have been finally taken against Jacob White, David Cummins, and Robert Bennifield, by confession, without a previous decree nisi and a regular service thereof, and for which and other errors apparent on the face of the decree, the court do award, order, and decree, that the said decree be reversed and annulled, and that the said original bill be remanded to the rules for further proceedings according to law; and the court do further award, order, and decree, that, in this bill of review, each party pay his own costs. On motion of the defendants, by their counsel, an appeal is allowed to the Supreme Court of the United States, according to the act of Congress in such cases made and provided, on condition they file a bond with Daniel J. Caswell and Bellamy Storer, their bail, in the sum of five hundred dollars.

Appeal.

Compl'ts' costs,	Clerk's fees,	$7 03,	$14 53.
	Marshal's "	7 50,	
Def'ts' costs,	Clerk's "	3 69,	3 69.

And afterwards, to wit, on the thirtieth day of July, Anno Domini eighteen hundred and thirty-two, the defendants' caused the following appeal bond to be filed with the clerk of the court aforesaid, to wit: "Know all men by these presents, that we, Bellamy Storer and Daniel J. Caswell, are held and firmly bound unto Jacob White, David Cummins, and Robert Bennifield, in the sum of five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents: sealed with our seals, and dated the thirtieth day of July, Anno Domini eighteen hundred and thirty-two.

Bond.

Whereas at the July term of the United States' seventh circuit court for the district of Ohio, in the year eighteen hundred and thirty-two, upon the hearing and consideration of a certain suit in chancery pending in said court, wherein Jacob White, David Cummins, and Robert Bennifield, were complainants, and the President, Directors, and Company of the Bank of the United States were defendants, (on a bill of review,) it was, among other things, ordered and decreed that the decree referred to, and particularly described in said bill of review, be reversed and annulled, &c., and that in the bill of review each party pay his own costs, by reference to said decree will fully appear; from which said decree the President, Directors, and Company of the Bank of the United States prayed, and were allowed an appeal to the Supreme Court of the United States, pursuant to the act of Congress in such case made and provided, as by reference to the proceedings of said circuit court will fully and at large appear. Now, therefore, the condition of the above obligation is such that, in case the aforesaid bill of review should be ultimately dismissed, then if they, the said the President, Directors, and Company of the Bank of the United States, or the said Bellamy Storer and Daniel I. Caswell do, and shall faithfully pay all costs now, or hereafter adjudged or decreed against said President, Directors, and Company of the Bank of the United States in the matter aforesaid, the said obligation to be void; otherwise the same to be and remain in full force and virtue.

BELLAMY STORER. [SEAL.]
DANIEL J. CASWELL. [SEAL.]

The UNITED STATES OF AMERICA, *District of Ohio, sct.*

I, William Miner, clerk of the seventh circuit court of the United States in and for the district of Ohio aforesaid, do hereby certify the aforegoing to be a true transcript of the record, decree, and proceedings thereon, in a suit determined in said court, in which Jacob White, David Cummins, and Robert Bennifield were complainants, and the President, Directors, and Company of the Bank of the United States were defendants, as the same now stand among the files of my office.

In testimony whereof, I have hereunto set my name, and affixed the seal of the said court, at Columbus, the 28th day of November, Anno Domini eighteen hundred and thirty-two, and of the independence of the United States the 57th.

[L. s.] Attest: WILLIAM MINER,
Clerk.

Clerk's fees, allowance and bond, &c. - - - -	$1 00
Transcript - - - - - - - -	6 50
	$7 50